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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Evans et al.	Examiner:	Becker, Drew E.
Serial No.:	09/241,508	Group Art Unit:	1761
Filed:	February 1, 1999		
For:	BLUNT EDGE DOUGH CUTTER	Docket No.	PIL0031/US P5664US

Commissioner for Patents
Washington, D.C. 20231

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REPLY BRIEF

Dear Sir:

The present Reply Brief is submitted in response to Examiner's Answer dated February 4, 2003. It is further submitted that this Reply Brief is timely filed within the two-month period set out in M.P.E.P. § 1208.03. No fee is believed to be due at this time. If any fees are required, please charge them to Deposit Account No. 50-1775 and notify us of the same.

REMARKS

Applicants note the Examiner's agreement with sections 1 through 5 of the Appeal Brief filed November 12, 2002 and further note the Examiner's elimination of the rejections relying upon the Carollo reference in section 6. With regard to section 7 related to the grouping of claims, the Applicants respectfully disagree with the Examiner's statement that the appellant did not give reasons in the argument to support the statement that the claims do not stand or fall together. As required by 37 C.F.R. § 1.192(c)(7), the appellant is required to both state that the claims do not stand or fall together and present arguments as to why the claims subject to the same rejection are separately patentable. Applicants believe that the arguments presented do satisfy this requirement, as explained below.

First, because the first issue regarding whether claims 60-62 and claim 71 are patentable over Carollo has been dropped with regard to this appeal, the grouping of claims with regard to this issue is considered moot and not considered in this reply brief. With regard to Issue 2 regarding the patentability of claims 60-64, 68, 69, and 71-74 over the Makowecki reference, the argument section for Issue 2 in the Appeal Brief describes the differences between the Makowecki device that is used to mold a filled food product tube into individual food product segments, and the present invention that is directed to a process for shaping and cutting a dough sheet. It is asserted in the argument that Makowecki does not teach or disclose every element of claim 71, and is therefore considered patentable. With respect to claim 72 that depends from claim 71, the argument states that claim 72 is patentable because the addition of a conveyor to the limitations of claim 71 does not cure the deficiencies previously described relative to Makowecki. With respect to independent claim 73, the argument particularly points out that Makowecki does not teach or disclose a dough cutting apparatus having the structures and surfaces specifically defined in claim 73, such as the inner and outer peripheries of structures, each of which has certain functions relative to shaping and/or cutting a dough sheet. In particular, the argument asserts that because the cutting edge and sealing lips of Makowecki are part of the same external boundary of a stamping die, these components cannot be individually defined as an outer and inner periphery, as in the present claims. Because the addition of a step of a particular manner of processing dough pieces in claim 74 that results in an expansion of dough pieces in volume does not cure these deficiencies, claim 74 is likewise described as patentable.

The Issue 2 argument in the Appeal Brief also particularly describes the reasons each of claims 60-64 and 68-69 are patentable over Makowecki. In particular, the cutter of Makowecki is described as lacking a dough shaping surface that both severs and shapes the dough, as recited in independent claim 60. The particular limitation of a rounded corner for the dough engaging portion in claim 61 is further described as providing another reason that this claim is separately patentable over Makowecki. The particular further limitation of a flat tip portion for the dough shaping surface in claim 62 is described in the argument as a further reason that this claim is separately patentable over Makowecki, and the angled surface limitation for the dough shaping surface of

claim 63 is also described as at least one reason that this claim is separately patentable over Makowecki. Finally, with regard to the arguments for the patentability of claims 68 and 69, the limitations to the cutter of including a plurality of structures with inner and outer peripheries of different geometries are provided as further reasons that claims 68 and 69 are separately patentable over the device of Makowecki.

The arguments provided in Issue 3 of the Appeal Brief similarly provide separate reasons that each of the claims 65, 66, and 70 are patentable. Specifically, claims 65 and 66, which were rejected as unpatentable over Makowecki in view of Simelunas, are described in the argument as being separately patentable in that neither of these references teach or suggest the walking or reciprocating head cutters required by the claims. In addition, the argument explains that claim 70, which was rejected as unpatentable over Makowecki in view of RADEMAKER B.V., is separately patentable in that the Rademaker pamphlet does not show a cutter that includes a cutter edge adjacent to and spaced from a dough shaping surface in the manner recited in the present claim 70.

For the above reasons, the Applicants have provided the necessary reasons in the arguments of the Appeal Brief to satisfy the requirements of 37 C.F.R. §1.192(c)(7) such that claims 60-66 and 68-74 should not stand or fall together for the purposes of this appeal.

In the section under Item 10 entitled "Election/Restrictions", the Examiner indicated that the application contains claims 75-77 drawn to an invention nonelected without traverse in Paper No. 4 and that a complete reply to the final rejection must include cancellation of these claims. Applicants respectfully direct the Examiner's attention to pages 1 and 2 of the Response To Final Office Action mailed on August 6, 2002. In particular, page 1 indicates that claims 75-77 are withdrawn from consideration and page 2, first paragraph, requests cancellation of claims 75-77 without prejudice or disclaimer of the subject matter contained therein. Thus, the requirement of canceling the nonelected claims in the present application is believed to be satisfied.

With regard to the Examiner's discussion of the rejection of claims 60-64 and 68-69, Applicants note that the Examiner further expanded earlier arguments relative to these claims by citing three cases directed to the pertinence of size differences to patentability. However, Applicants have argued throughout the prosecution of this

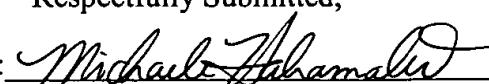
application, including the Appeal Brief, that these claims are also patentable for reasons related to structural differences between the present claims and the Makowecki device. In particular, the dough cutting and forming apparatus of claim 60 comprises a dough shaping surface that both shapes and serves a dough sheet, while Makowecki includes a cutting edge 39 that cuts the cylinder of food product and a separate sealing edge 41 that crimps and seals the cut food cylinder. Thus, Makowecki does not teach or suggest a *single* surface that can both shape and sever a dough sheet and therefore cannot render obvious the apparatus recited in claim 60 or any of its dependent claims.

Finally, in Item 11 of the Examiner's Answer, the Examiner responds to the various arguments provided in the Appeal Brief. Many of the items in this section refer to surfaces 39 and 41 of Makowecki. Although Applicants do not believe it necessary to reiterate their arguments of the Appeal Brief in this Reply Brief, Applicants do wish to emphasize again that the present claims are directed to apparatuses and methods for shaping and cutting a dough sheet, where the first and second skins of that dough sheet are drawn toward each other until they are substantially pinched together. After these surfaces are pinched together, the dough sheet can be severed. The shaping of the dough sheet and serving of the dough sheet are both performed by the dough shaping surface of the present invention. None of the cited art, including the surfaces 39 and 41 of Makowecki, teach or suggest such methods or apparatuses.

In view of the foregoing and the previously submitted Appeal Brief in the subject application it is submitted that claims 60-66 and 68-74 are in condition for allowance. It is respectfully requested that the Examiner's decision finally rejecting claims 60-66 and 68-74 be reversed by the Board of Patent Appeals and Interferences.

Respectfully Submitted,

Dated: April 2, 2003

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